

### REMARKS

Applicants thank the Examiner for the telephone interview on August 12, 2005. Claim 43 has been amended as discussed and as suggested by the Examiner during the telephone interview. New claims 49-52 have been added. The amendments have been made and the new claims added to place the application in better form for examination and to further obviate the 35 U.S.C. § 112 rejections set forth in the Office Action dated April 26, 2005 and the Advisory Action dated July 21, 2005. It is believed that none of these amendments or new claims constitutes new matter. Withdrawal of these rejections is respectfully requested.

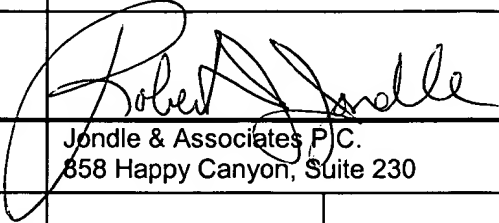
The Examiner has rejected claims 43-45 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement; specifically that the claims as amended contain new matter which is unsupported by the specification. Applicant has amended claim 43 as suggested by the Examiner during the telephone interview. Withdrawal of this rejection is respectfully requested.

The Examiner has rejected claims 43-45 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner states that the claims "are vague and indefinite in recitation of 'about 60% to about 90% homology over the entire length of the template promoter.'" Applicant has amended claim 43 as suggested by the Examiner during the telephone interview. Additionally, applicant submits that support for the amendments to claim 43 can be found in the Specification on page 11, line 7-8 where it is stated "Segments are considered similar if they have between 60% and 100% sequence identity over the segment being examined. These segments are usually 20-100 bases in length, although smaller or longer segments can also be selected". Also on page 11, line 29 it is stated "In order to maximize this effect of the hybrid promoter, it is preferred that over at least 15% of the sequence of the original promoter has been replaced in the hybrid promoter". Withdrawal of this rejection is respectfully requested.

Reconsideration of this application and early notice of allowance is requested.

Application No. 09/782,255  
Amendment dated August 16, 2005  
Reply to Advisory Action dated July 21, 2005

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